From: David Wood
To: Microsoft ATR
Date: 1/23/02 1:40pm
Subject: Microsoft Settlement

As a software developer for over 10 years, and an entrepeneur in the software and media (video game) industries, I feel I must offer my comments on the proposed settlement between Microsoft and the Department of Justice.

In summary, the Proposed Final Judgment allows many exclusionary practices to continue, and does not take any direct measures to reduce the Applications Barrier to Entry faced by new entrants to the market.

It is my firm belief, and one shared with many of my colleagues, that Microsoft has, by virtue of its status as a monopoly, been a massively pernicious influence on the computer industry, and by direct result, on our nation's economy. The insulation from real challenge which Microsoft has enjoyed over the past 15 years has been felt uniformly in its products, services, and conduct toward its customers, let alone towards its competitors. Had Microsoft been obliged to compete on the basis of technical merit alone, our everyday computing experience would be staggeringly different - with a net effect of what I believe to be hundreds of billions of dollars in cumulative productivity gains.

When Bell Telephone was still the nascent nervous system of our country, regulators saw the necessity of strong remedies, despite some now familiar scare tactics. Had they not, phone calls would cost dollars instead of cents, and the world would be a very different place; dependent on the imaginations of a single organization which is insulated from threats and fears change.

Developing a remedy for the computer industry will be even more difficult than for the telecommunications industry, and it will be even more essential.

In short:

* While the government cannot maintain an operating system standard, or pick a winner from the marketplace, it can have a massively beneficial effect by encouraging competition through a remedy which directs Microsoft to providing some aid for ISVs engaged in making Windows-compatible operating systems.

By inducing Microsoft to make full disclosure about its products, especially its operating systems past and present, and to support competitors who wish to make compatible products, competition can be reintroduced to the marketplace. This will force developers to compete on the basis of merit, instead of through obscurity, lack of standardization,

incompatibility, and patent lawsuits - the current way things are done.

The Findings of Fact (P52) considered the possibility that competing operating systems could implement the Windows APIs and thereby directly run software written for Windows as a way of circumventing the Applications Barrier to Entry. This is in fact the route being taken by the Linux operating system, which includes middleware (named WINE) that can run many Windows programs.

To the contrary, the PFJ as it currently stands, in sections III.D. and III.E., restricts information released by those sections to be used "for the sole purpose of interoperating with a Windows Operating System Product". This prohibits ISVs from using the information for the purpose of writing operating systems that interoperate with Windows programs, and it would virtually ensure Microsoft never need fear meaningful competition on the basis of technical merit.

* The PFJ as currently written appears to lack an effective enforcement mechanism. It does provide for the creation of a Technical Committee with investigative powers, but appears to leave all actual enforcement to the legal system.

* The PFJ provides for increased disclosure of technical information to ISVs, but these provisions are flawed in several ways: The PFJ fails to require advance notice of technical requirements, API documentation is released too late to help ISVs, many important APIs would remain undocumented, unreasonable restrictions are placed on the use of the released documentation, file formats remain undocumented, and patents covering the Windows APIs remain undisclosed.

* The PFJ prohibits certain behaviors by Microsoft towards OEMs, but curiously allows the following exclusionary practices:

Section III.A.2 allows Microsoft to retaliate against any OEM that ships Personal Computers containing a competing Operating System but no Microsoft operating system.

Section III.B requires Microsoft to license Windows on uniform terms and at published prices to the top 20 OEMs, but says nothing about smaller OEMs. This leaves Microsoft free to retaliate against smaller OEMs, including important regional 'white box' OEMs, if they offer competing products.

Section III.B also allows Microsoft to offer unspecified Market Development Allowances -- in effect, discounts -- to OEMs. For instance, Microsoft could offer discounts on Windows to OEMs based on the number of copies of Microsoft Office or Pocket PC systems sold by that OEM. In effect, this allows Microsoft to leverage its monopoly on Intel-compatible operating systems to increase its market share in other areas, such as

office software or ARM-compatible operating systems.

By allowing these practices, the PFJ is encouraging Microsoft to extend its monopoly in Intel-compatible operating systems, and to leverage it into new areas.

* Microsoft still engages in EULA practices which discriminate against competitors, specifically any windows-compatible alternative operating system. Specifically, I provide two examples: the Microsoft Windows Media Encoder 7.1 SDK EULA discriminates against ISVs who ship Open Source applications, and the Microsoft Platform SDK EULA prohibits use of necessary components on non-Microsoft products. There are numerous others, as this is a systematic anticompetitive strategy on the part of Microsoft. The PFJ does nothing to discourage these onerous practices.

* Microsoft's enterprise license agreements often resemble the per-processor licenses which were prohibited by the 1994 consent decree in the earlier US v. Microsoft antitrust case, in that a fee is charged for each desktop or portable computer which could run a Microsoft operating system, regardless of whether any Microsoft software is actually installed on the affected computer. These agreements are anticompetitive because they remove any financial incentive for individuals or departments to run non-Microsoft software.

* the PFJ's definition of API might omit important APIs such as the Microsoft Installer APIs which are used by installer programs to install software on Windows.

* the definition of "Microsoft Middleware" (P28) is unnecessarily restrictive and contains significant loopholes, such as exclusion based simply on version numbers or distribution methods.

* "Microsoft Middleware Product" does not include .NET, Outlook, or Office.

I should note that these and other objects have been excellently detailed further at the following URL:

http://www.kegel.com/remedy/remedy2.html

I hope that these matters will be seriously considered.

Microsoft's belligerent behavior and our-way-or-the-highway quality standards have been a terrible burden on our workplace, our industry, and our lives. We hope the court has the imagination to understand what better alternatives exist, and to understand the dramatic good effect that strong, intelligent, proper solutions can have. With the high costs and dramatic failures the press has recently observed, I trust the disaster of the status quo is obvious.

Best Regards,
-David Wood